

The Nazis' Nuremberg Race Laws: Made in USA?

A Review

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In 1933, Germany's National Socialists found themselves in command of one of the world's most advanced states with a pressing agenda to remove Jews from the command structure of its society, along with the upper strata of lucrative professions such as law, medicine and the media. With typically German methodicality, they set about crafting a body of law under which to bring this massive change about. Again in keeping with traits of order and logic for which the people are famous, they first launched an inquiry into precedents of law for carrying out programs such as theirs. There weren't many, around the world, with but one batch of 31 exceptions all in one country: the United States of America. This book examines the Germans' project of lawfare on the Jews, but never touches on the supreme irony that that very same United States of America outfitted and supplied the bulk of the massive military effort that laid their country waste and conquered less than ten years later.

Hitler's American Model: The United States and Making of Nazi Race Law. James Q. Whitman. Princeton University Press, Princeton, N.J., 2017, 224 pp.

HITLER'S AMERICAN MODEL



The United States and
the Making of Nazi Race Law

JAMES Q. WHITMAN

In 1933, when the National Socialists became able to fulfill their long-stated ambition to rid German society of Jews, no modern state had ever before undertaken to formulate and enact laws to bring such a thing about. All previous episodes resembling the mooted cleansing had been accomplished by little more than royal decrees received by subjects to a greater or lesser extent eager to carry them out (and, of course, acquire such property as the victims had to leave behind, or surrender in exchange for safe passage). The National Socialists initially feared that they might have to invent an entire body of law and jurisprudence from whole cloth, as it were.

Fortunately for them, it turned out that it would not be quite necessary to reinvent this evil “wheel.” There were, by their meticulous count, fully thirty-one governments that had enacted anti-miscegenation, anti-integration and/or multi-tiered citizenship and immigration laws. Every one of these, with the exception of the federal government itself, was a state of the United States.

Like good inventors everywhere, the Germans carefully cataloged those laws and actually published their findings in a number of lists and compendia preparatory to the process that ultimately, in 1935, produced the infamous Nuremberg Laws that as-precisely as-possible defined who in Germany was a racial undesirable, and what disabilities these unfortunates were to be subjected to for as long as they remained in the territory claimed by the Master Race of National Socialist ideology. These unfortunates were, of course, the Jews. Perhaps the chief among many authentic sources Whitman cites for the product of the German inquiries is Heinrich Krieger’s 1936 [opus](#) *Das Rassenrecht in den vereinigten Staaten (Race Law in the United States)*, the 361-page product of a two-year residence in the United States by Krieger.

Americans in particular misconceive the thrust of American race law as relating to segregation of public facilities such as bathrooms, drinking fountains, lunch counters and seats on a bus. Such segregation was never much on the minds of Germans, whose disfavored minority differed so little from themselves that ultimately Jews were required to display yellow stars on their clothing to distinguish themselves from the rest of the population. This “disconnect” has enabled past inquirers into connections between American and German race law to conclude that there is little to none. The author points out that this is a gross error.

The parts of American law that interested the Germans were those parts barring sexual relations and interbreeding as well as those that defined who was to be identified as members of the minority. Some states’ standards for “qualification” as a member of the minority (“one drop of blood”) indeed were so stringent that the Germans ultimately rejected those in favor of a system that gave a “pass” to candidates with only one Jewish grandparent who otherwise behaved themselves by not marrying Jews nor practicing the Jewish religion.

Aside from restriction of social/reproductive interactions with the “superior” majority, the Germans had other racist goals that did not align quite so well with the aims of US laws, but that hardly rendered the American legislation irrelevant for the eager-to-learn Germans. For example, as Whitman repeatedly asserts, the goal of National Socialist racial policies was removal of Jews first from government, academia and the professions and then removal of the Jews from the territory of Germany. Ever since the death of Abraham Lincoln’s mass-deportation dream for emancipated Blacks, no such eventuality figured into American legislation: the Blacks were here to stay, and so had to be kept down (by the Whites). Removing them from government, academia and the professions was no issue beyond making sure to keep them out.

The antecedents to Germany's "problem" vis-à-vis that of the United States were profoundly different. The objects of American policy were "up from slavery," so to speak; the hapless victims (immigrated very much under duress, hardly of their own volition) had always been an underclass. The Jews, on the other hand, occupied socio-economic strata concentrated toward the middle and ranging upwards to the very peaks of German society and government. Removal from the upper strata was swift and straightforward; removal from the territory prior to the advent of eastward conquests in 1939 took the form of encouragement of emigration together with arrangements (the Haavara Agreement) with Zionists to support emigration specifically to Palestine. In that the latter was not a feature in any way enshrined in US law, Whitman gives it nary a mention.

Whitman does emphasize (again, repeatedly) that examples of this sort of law and regulation were nowhere to be found in the world for the inquiring Germans, except in scattered local traditions and practices in various colonial outposts of the British Empire. The United States was indeed the mother lode of such law and practice as the Germans sought to derive lessons from, albeit for reasons originally profoundly different from those impelling the Germans in the early and mid 1930s. One pervasive element at least of style, if not of substance, distinguishing American precedents from German imitations was the need of the pioneers, particularly in the southern states, to reconcile their aims with the equality and race-blind implications of the US Constitution, particularly its Fourteenth Amendment, in which slavery was abolished. Again, of course, slavery was not among the German antecedents to begin with, but the notions of racial "equality" at least before the law imparted a certain *sub rosa* quality to the American legislation that was altogether superfluous to the latter-day racists in Europe.

A subject such as the one of this book imposes an almost irresistible force upon the author to engage in German-bashing, up to and including the allegations of genocidal intent that form the noxious core of the common assaults upon the national nemesis of Jewry. Whitman admirably abjures it all, while at the same time avoiding the distastefully anodyne tone that can afflict such efforts when they are so scrupulously carried out. In a negative way, this phenomenon points to a very happy attribute that suffuses this text: Whitman is a serious, informative writer who manages at the same time to maintain an altogether engaging atmosphere in his writing. He does this entirely without artifice, without resort to tricks—at least, devices apparent to this reviewer—by means of which artificially to impart tension or arouse curiosity in the narrative. The story itself as rendered is quite sufficient to motivate brisk reading, without extraneous adornment.

On the other hand, this thorough, punctilious legal scholar does take the trouble to provide full context for the developments he reports. For example, what connection could there be between the famous 1935 incident aboard the North German Lloyd liner *Bremen* in New York harbor when a gang of communists stormed aboard and tore down the swastika banner on its bow, and the Nuremberg Laws? There most-definitely is a connection, and the author relates it clearly and carefully, and one comes away from the account with a renewed appreciation for the importance of what lately has acquired the label "path dependency."

Photographs and reproductions of period maps round out this most-worthy account of a connection most would find surprising, and all could find informative in most-vital ways.

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